

James M. Hanavan, State Bar No. 66097
Kristen E. Drake, State Bar No. 202827
CRAIGIE, McCARTHY & CLOW
540 Pacific Avenue
San Francisco, CA 94133
Telephone: (415) 732-7788
Facsimile: (415) 732-7783

Attorneys for Plaintiff Trevor Moss

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TREVOR MOSS,

Plaintiff,

v.

TIBERON MINERALS LTD.,

Defendant.

Case No.: C 07-2732- SC

**PLAINTIFF'S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS FOR *FORUM
NON- CONVENIENS***

Hearing Date: October 26, 2007
Time: 10:00 a.m.
Location: Courtroom 1, 17th Floor
Judge: Hon. Samuel Conti

///

///

///

///

///

///

///

///

///

Pursuant to Federal Rule of Evidence 201(b), plaintiff Trevor Moss respectfully requests that this Court take judicial notice of the following:

Geography

1. The fact that Vancouver, British Columbia is closer to San Francisco, California than to Toronto, Ontario.

2. The fact that Brisbane, Melbourne and Sydney, Australia are all closer to San Francisco, California than to Toronto, Ontario.

3. The fact that Denver, Colorado is closer to San Francisco, California than to Toronto, Ontario.

4. The fact that Hanoi, Vietnam is closer to San Francisco, California than to Toronto, Ontario.

Legal Authority

Because they are easily verified, geographical locations and boundaries may be judicially noticed. *Central Green Co. v. United States* (2001) 531 US 425, 434; *Hartford Fire Ins. Co. v. Orient Overseas Containers Lines (UK) Ltd.* (2nd Cir. 2000) 230 F.3d 549, 556 (court took judicial notice of mileage cargo traveled by land to determine whether dispute fell within admiralty jurisdiction). Geography has long been peculiarly susceptible to judicial notice for the obvious reason that geographic locations are facts which are not generally controversial. *United States v. Hernandez Fundora* (2nd Cir. 1995) 58 F.3d 802, 806; *United States v. Bello* (1st Cir. 1999) 194 F.3d 18, 23. Judicial notice has been taken of the territorial boundaries of a canal zone, *Government of Canal Zone v. Burjan* (5th Cir. 1979) 596 F.2d 690, 693, and the distance between Rota (Mariana Islands) and Guam to determine whether drugs traveled through international waters. *United States v. Perez* (9th Cir. 1985) 776 F.2d 797, 801-802.

Internet Press Releases

5. Series of press releases from the internet, true and correct copies of which are attached hereto as Exhibit "A" and authenticated in the accompanying declaration of James M. Hanavan.

1 Legal Authority

2 In *Perfect 10, Inc. v. Cybernet Ventures, Inc.* 213 F.Supp.2d 1146, 1154 (C.D.Cal., 2002),
 3 plaintiff sought a preliminary injunction against an allegedly infringing defendant. The court held
 4 that a plaintiff witness's "declaration adequately establishes the *prima facie* case for admissibility
 5 in claiming the exhibits attached" to declarant's declaration "were true and correct copies of
 6 pages printed from the Internet that were printed by" the declarant or "under his direction." The
 7 court noted that "because computer printouts are the only practical method by which the
 8 allegations of the complaint can be brought before the Court and there is generally a reduced
 9 evidentiary standard in preliminary injunction motions," the court held the witness's "declaration
 10 is sufficient to establish the exhibits' authenticity."

11 In yet another California federal decision, *Florida Conference Ass'n of Seventh-Day*
 12 *Adventists v. Kyriakides* 151 F.Supp.2d 1223, 1225-1226 (C.D. Cal., 2001), plaintiff's action
 13 arose from breach of a charter party contract, and plaintiff moved to have the garnishee, a party to
 14 the suit, pay a debt owed to defendant into the court registry. The garnishee had filed reports with
 15 the SEC admitting the debt was due, and plaintiff printed the SEC reports off the Internet Lexis-
 16 Nexis Web site and offered copies into evidence. The court held the reports were admissible as
 17 party admissions under Federal Rule of Evidence section 801(d) (2) (A).

18 The federal rules treat party admissions as *nonhearsay*. Fed. Rule of Evid. 801(d) (2).
 19 The theory is that "their admissibility in evidence is the result of the adversary system rather than
 20 satisfaction of the conditions of the hearsay rule." In effect, the federal rules dispense with any
 21 concern about the *trustworthiness* of party admissions. See Fed. Rule of Evid. 801(d) (2),
 22 Adv.Comm. Notes.

23 Court Records Online

24 6. Defendants' Rule 7.1 Corporate Disclosure Statement in the case of *Osram*
 25 *Sylvania Products, Inc. v. Tiberon Minerals Ltd., et al.*, United States District Court for the
 26 Middle District of Pennsylvania Case Number 3:07-cv-865, a true and correct copy of which is
 27 attached hereto as Exhibit "B".
 28

7. Verified Complaint in the case of *Osram Sylvania Products, Inc. v. Tiberon Minerals Ltd., et al.*, United States District Court for the Middle District of Pennsylvania Case Number 3:07-cv-865, a true and correct copy of which is attached hereto as Exhibit “C”. Of particular relevance are the following paragraphs of the Complaint: 4, 59, 61, 66, 71, and 80, as well as the Pre-Acquisition Agreement attached as Exhibit 3 to the Complaint in which both Tiberon’s former board members and the Vietnam joint venture agreed on December 18, 2006, that neither Tiberon nor the venture would “...take any action other than in the ordinary, regular and usual course of business and consistent with past practice (none of which actions shall be unreasonable or unusual) ... with respect to the grant of any bonuses... payable to ... officers ... consultants or agents of [Tiberon or the venture] otherwise than pursuant to agreements ... or arrangements in effect ... on the date hereof ...” [Pre-Acquisition Agreement at p.13, Exhibit 3 to the Complaint.]

Legal Authority

Courts may take judicial notice of court records that are available to the public online. *Lynch v. Leis* (6th Cir. 2004) 382 F.3d 642, 648, fn. 5.

Dated: October 5, 2007

CRAIGIE, McCARTHY & CLOW

/s/ James M. Hanavan
By: James M. Hanavan
Attorneys for Plaintiff Trevor Moss